

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)

Communications Assistance for
Law Enforcement Act)

Revenue Estimates of
Five Manufacturers)

CC Docket No. 97-213

FCC MAIL ROOM

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on its behalf and on behalf of its subsidiaries, ("SBC") reasserts that, contrary to the position of the Department of Justice/Federal Bureau of Investigation ("DOJ/FBI"), the cost estimates provided in the Public Notice greatly understate, rather than overstate, the cost of implementation for J-STD-025 and the "punchlist items" requested by the DOJ/FBI. Such costs are undeniably relevant to the instant proceeding in which the Commission is to adopt a technical industry standard. The DOJ/FBI's myopic reading of Section 107¹ would have the Commission disregard the clear and unequivocal language of subsection 107(b) which states that in adopting technical requirements the Commission is to assess "cost effective-methods" for meeting the assistance capability requirements of Section 103² and "to minimize the cost of such compliance on ratepayers." Contrary to the DOJ/FBI's assertions,³ cost is a statutorily required consideration in the Commission's establishment of a technical standard. As SBC and other parties have argued in the past, it is therefore appropriate and necessary for the Commission to ascertain the costs associated with the J-STD-025 standard, which

¹ 47 U.S.C. §1006.

² 47 U.S.C. §1002.

³ DOJ/FBI Comments, pp. 3-4.

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was the product of negotiations between the telecommunications industry and the DOJ/FBI, as well as the additional punchlist items still demanded by the DOJ/FBI.⁴

I. The Cost Estimates Cited In The Public Notice Understate, Rather Than Overstate, The Probable Cost Of Implementation.

Although the DOJ/FBI states that the numbers cited in the Public Notice "...are inflated far in excess of any realistic projection of the costs...",⁵ it offers no evidence to this effect. The DOJ/FBI has in its possession estimates from various manufacturers and suppliers, yet it fails to supply this data for public comment. Instead, it bases its argument upon several, apparently incorrect, assumptions.

First, there is no reason to assume as the DOJ/FBI asserts that the costs cited are "list prices" and that the actual costs to the carriers will be substantially less.⁶ To the contrary, "discounted" prices do not equate to lower cost estimates. The costs provided in SBC's Comments in this proceeding *are* based upon the current supplier discounts, the same type of discounts cited by the DOJ/FBI. Since SBC's estimated costs are but a fraction of the compliance costs to be incurred, the total costs for the industry as a whole will, in all likelihood, be significantly greater, rather than less, than the Public Notice estimates.

Second, the DOJ/FBI claims that the Public Notice's estimate of costs incorrectly "appear[s] to be based on the premise that *all* of the switches in service in the carriers'

⁴ It is ironic that that DOJ/FBI should assert that it has been deprived of relevant vendor cost data and thus is unable to "offer meaningful comments." DOJ/FBI Comments, pp. 4-5. In the past, it has been the DOJ/FBI which has denied telecommunications carriers, as well as the Commission, access to information in its possession related to the costs of CALEA implementation. If the DOJ/FBI has information which contraverts the cost estimates which are on the record, then it certainly has had every opportunity to provide data in support of its claims. It has not done so.

⁵ DOJ/FBI Comments, p. 6.

⁶ DOJ/FBI Comments, p. 6-7.

network must be brought into compliance at the carriers' expense."⁷ In making this argument, the DOJ/FBI notes that CALEA compliance is only required for equipment, facilities or services installed or deployed prior to January 1, 1995 when the equipment, facilities and services undergo a major modification. However, in relation to this provision of CALEA, the DOJ/FBI through its unilaterally adopted cost recovery regulations has effectively shifted the burden of immediate CALEA compliance to the carriers. Thus, while the costs which will be incurred by the carriers may be delayed for a short period of time, such costs will not be delayed interminably. Therefore, there is no rationale to support the DOJ/FBI's conclusion that these foreseeable and predictable costs should be excluded from the Commission's estimates. To refute the DOJ/FBI assumption that the Commission's estimates are based upon expenditures for every carrier switch, SBC would again point to its own cost estimates which are based upon the limited information it has thus far received from the DOJ/FBI as to its complete location specific CALEA requirements and capacity forecasts.⁸

II. As Recognized By The Commission, The Revenue Estimates Provided By Five Manufacturers Does Not Encompass All Of The Costs Which Will Be Incurred By The Industry.

In its Public Notice, the Commission itself recognized the limitations of the cost estimates it provided for public comment. As SBC in its Comments filed on May 17, 1999, explained, the five manufacturers whose aggregate costs were cited were not representative of all of the suppliers required for CALEA compliance nor were these

⁷ DOJ/FBI Comments, pp. 7-8.

⁸ The DOJ/FBI has yet to provide the SBC companies with a location specific final capacity notice. In any event, the DOJ/FBI's capacity notice to date has been based on county, not central office location, which is how equipment is ordered. Given this fact, we have been forced to make assumptions to ensure adequate capacity at each central office located in a given county. An assumption that every switch will require conversion is based upon the failure of the DOJ/FBI to limit the scope of its requirements rather than an intention to inflate cost estimates.

estimates more than a portion of the total costs which will be incurred.⁹ Therefore, it is disingenuous for the DOJ/FBI to cite these estimates as proof of an overstatement of compliance costs by industry groups.¹⁰ Implementation of a CALEA technical standard, with or without the additional "punchlist" items urged by the DOJ/FBI, involves more than simply software. Costs relating to associated hardware, capacity provisioning and the accelerated scheduling of generic deployment are appropriately included in industry estimates. Nor will any agreement which the FBI may, or may not, reach with a single manufacturer related to software alter this conclusion.

Moreover, the DOJ/FBI misses the point when it claims that the Public Notice estimates offer undeniable proof that industry estimates as to the implementation costs for its proposed "punchlist" items were in error.¹¹ The current cost information for the "punchlist" items which has been made available to carriers is admittedly inconclusive to an extent because certain manufacturers will not even venture a guess as to the cost of these items and others have been restricted by the DOJ/FBI from disclosing their prices. However, even if the DOJ/FBI's assertions were true, it is absurd to argue that justification exists for requiring unwarranted additional capabilities because the cost for implementing these "punchlist" items is only several tens of millions of dollars more than that required to implement J-STD-025. This conclusion is particularly true given the fact that J-STD-025 already fulfills the requirements of CALEA.

III. The Commission Is Not In A Position To Wait To Develop A Technical Industry Standard On The Basis That More Accurate Cost Information May Someday Become Available.

The DOJ/FBI urges the Commission to delay adopting a technical industry standard until negotiations related to CALEA compliant equipment, software and

⁹ SBC Comments. pp. 1-3.

¹⁰ DOJ/FBI Comments, pp. 8-10.

¹¹ DOJ/FBI Comments, pp. 9-10.

hardware are concluded.¹² This “cart-before-the-horse” approach would be difficult, if not impossible, to implement. Manufacturers are understandably unwilling to be tied down to specific prices relating to capabilities which are as yet undetermined. Until the telecommunications industry and its suppliers have the guidance provided by an unequivocal standard, only cost estimates will be available.

Moreover, it has been the experience of SBC that cost estimates have increased, rather than decreased, as a result of our discussions with manufacturers. The apparent belief of the DOJ/FBI that compliance costs will be reduced in subsequent contract negotiations is unsupported by past transactions.

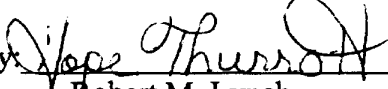
¹² DOJ/FBI Comments, pp. 9-10.

IV. Conclusion

Despite the verbosity of the DOJ/FBI's contentions, the DOJ/FBI offers nothing upon which the Commission may rely in concluding that the cost estimates provided in the Public Notice are overstated. Rather, as SBC and other commentators have demonstrated, the contrary is true. The estimated cost to implement the J-STD-025 standard is understated, as is the additional cost associated with the DOJ/FBI "punchlist" items. Not only are these "punchlist" items not required by Section 103, to mandate these items, in light of the prohibitive cost of implementation and the cost burden on ratepayers, would violate the terms of Section 107 of CALEA.

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May 27, 1999

Certificate of Service

On the 27th day of May, 1999, I, Katie Turner, hereby certify that the Reply Comments of SBC Communications Inc. in CC Docket 97-213 have been served upon the parties listed in the Service List attached to the Reply Comments of SBC Communications Inc.

/s/ Katie Turner

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